

**THE ARKANSAS COMMISSION OF PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION
RULES GOVERNING THE
TRANSITIONAL ACADEMIC FACILITIES PROGRAM**

1.0 REGULATORY AUTHORITY

- 1.01 These rules are promulgated pursuant to Ark. Code Ann. §§ 6-20-2506, 6-21-804(b), 25-15-204 and Acts 1327, 1426 and 2206 of the 85th Arkansas General Assembly.

2.0 PURPOSE

- 2.01 The purpose of this rule is to establish the process and procedures governing the Transitional Academic Facilities Program under which the Division of Public School Academic Facilities and Transportation shall provide state financial participation based on an eligible school district's academic facilities wealth index in the form of reimbursement to a school district for eligible new construction projects for which the debt is incurred or funds are spent after January 1, 2005, and on or before June 30, 2006.

3.0 DEFINITIONS

- 3.01 For purposes of this rule, the following terms are as defined in Ark. Code Ann. §6-21-803 and §6-20-2502 (§ 1 of Act 1426 and Act 2206 of the 85th Arkansas General Assembly):
- 3.01.1 Academic facility;
 - 3.01.2 Academic facilities wealth index;
 - 3.01.3 Average daily membership;
 - 3.01.4 Facility condition index;
 - 3.01.5 Facilities improvement plan;
 - 3.01.6 Facilities master plan;
 - 3.01.7 Foundation funding;
 - 3.01.8 Immediate repair project;
 - 3.01.9 Local enhancements;
 - 3.01.10 Local resources;
 - 3.01.11 Maintenance, repair and renovation;
 - 3.01.12 Millage rate;
 - 3.01.13 New construction;
 - 3.01.14 Project;
 - 3.01.15 School district; and,
 - 3.01.16 Space utilization

4.0 TRANSITIONAL ACADEMIC FACILITIES PROGRAM

- 4.01 Under the rules of this program, a school district may proceed with new construction of an academic facility through the expenditure of local resources prior to the school district's eligibility for state financial participation and may apply the expenditure of local resources after January 1, 2005, and on or before June 30, 2006, toward meeting the school district's share of financial participation in the cost of the new construction project when, and if, the school district becomes eligible for state financial participation.
- 4.01.1 However, without regard to the general provisions of § 4.01, no school district may become eligible for state financial participation if the funding used to fund the new construction project resulted from proceeds of a debt issue prior to January 1, 2005.
- 4.01.2 No open-enrollment charter school shall be eligible for state financial participation in this program.
- 4.02 In the application process for state financial participation under this program, a school district shall provide the division with evidence of the following:
- 4.02.1 A new construction project for which debt was incurred or funds were spent after January 1, 2005, and on or before June 30, 2006;
- 4.02.2 The total cost of the new construction project. Districts have to be prepared to fund the entire project, as there is no guarantee of state funding. Total cost of new construction will include professional fees for design and construction management;
- 4.02.3 The new construction project's conformance with sound educational practices. The division shall consider, but is not limited to, rules, standards, practices and goals established by the division, the Department of Education, State Board of Education and the Arkansas General Assembly;
- 4.02.4 The new construction project's compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district as determined by the division. Appropriate space utilization refers to a district's over or under utilization of space based on the number of students within each academic facility within the school district.
- 4.02.4.1 The academic facilities standards in effect on the date the plans are submitted to the division are the academic facilities standards that will apply to the new construction project subject to § 6.0 of this rule;
- 4.02.5 The allocation of project costs between new construction activities and maintenance, repair, and renovation activities if the new

construction project includes improvements that could be classified as maintenance, repair, and renovation; and,

4.02.6 How the new construction project supports the prudent and resourceful expenditure of state funds and improves the school district's ability to deliver an adequate and equitable education to public school students in the district.

4.03 All applications for state financial participation under this program shall be submitted via first class mail, return receipt requested, or via stamped receipt of hand delivery, in the Office of the Director of The Division of Public School Academic Facilities and Transportation, 501 Woodlane St., 520-S, Little Rock, Arkansas 72201, no later than 4:30 p.m. on December 2, 2005.

4.04 School districts may only submit one application and shall identify all new construction transitional academic facilities projects on the application.

4.05 School districts may identify and prioritize new construction projects and provide a narrative description of the project(s) including graphic documentation and descriptions.

5.0 THE EVALUATION PROCESS AND AUTHORITY

5.01 The division shall evaluate a school district's application for state financial participation under the program and shall conduct an on-site inspection prior to making a determination of the new construction project's eligibility for reimbursement from the state.

5.02 During the on-site inspection, the division shall evaluate all of the following:

5.02.1 Student health and safety, including, without limitation, critical health and safety needs;

5.02.2 The new construction project's compliance with current academic facilities standards, including, without limitation, appropriate space utilization of existing academic facilities in the district;

5.02.3 The new construction project's conformance with sound educational practices;

5.02.4 Curriculum improvement and diversification, including without limitation, the use of instructional technology, distance learning, and access to advanced courses in science, mathematics, language arts, and social studies;

5.02.5 Multischool, multidistrict and regional planning to achieve the most effective and efficient instructional delivery system;

5.02.6 Reasonable travel time and practical means of addressing other demographic considerations; and,

5.02.7 Regularly scheduled maintenance, repair and renovation.

5.03 The division shall base its decision to approve or not approve an application in § 4.0 of this rule on certain factors, including, without limitation, the following:

5.03.1 The division's evaluation of the evidence submitted in the application as required in § 4.02 of this rule;

5.03.2 The division's evaluation of the on-site inspection required in § 5.02 of this rule;

5.03.3 The academic facilities wealth index of the school district; and,

5.03.4 The prudent and resourceful expenditure of state funds with regard to public school district academic facilities.

5.04 As soon as practicable, upon determination to approve or not approve an application for state participation under this program, the division shall provide written notice to the superintendent of the school district of the division's determination via first class mail, return receipt requested, at the mailing address of the administrative office of the school district.

5.05 If a school district qualifies for state financial participation under this program, the division shall, within thirty (30) calendar days of approval, certify in writing the amount of participation to the Commission on Public School Academic Facilities and Transportation for oversight purposes. The Commission shall certify in writing, within thirty (30) calendar days of receipt of certification from the division, the amount to the Department of Education, who shall then make payments to the approved school district.

5.06 For tracking purposes, the approved school district shall account for the funds received as state financial participation under this section as restricted funds and shall account for the funds in accordance with provisions of law, including, without limitation, the Arkansas Educational Financial Accounting and Reporting Act of 2005, Ark. Code Ann. § 6-20-2201 et seq. (Act 730 of the 85th Arkansas General Assembly) and related rules established by the State Board of Education or the Commission.

6.0 FUNDING

6.01 To the extent a school district's new construction project is approved, the project may be funded as follows:

6.01.1 The project may qualify for funding in the amount of the product of \$90.00 or the actual contract dollar amount or a dollar amount established by the Division (whichever is the lesser amount) per square foot multiplied by the school district's wealth index.

- 6.01.2 The Division and Commission shall have the right in its discretion to deny application funding approval in whole or in part when the Division of Commission determines denial of application for funding is prudent and in the best interest of the resourceful expenditures of state funds with regard to public school district academic facilities.
- 6.02 School districts shall make every effort to conform a new construction project to current academic facilities standards, including, without limitation, appropriate space utilization requirements, unless in the judgment of the division it is impractical to conform the new construction project to current standards.
- 6.03 If the division determines that it is impractical for a school district to conform to current standards, the division shall establish which academic facilities standards the school district shall conform to in order to be eligible for state participation under this program.
- 6.04 If a school district does not substantially begin the new construction project which received application approval pursuant to these rules by June 30, 2006, the state's approved financial participation may be rescinded and otherwise applied as in the best interest of resourceful expenditures of state funds with regard to public school district academic facilities.

7.0 APPEAL PROCESS

- 7.01 A school district may appeal any determination of the division to the Commission as follows:
- 7.01.1 A school district may request and the division shall provide upon request a written determination of any appealable issue by the division.
- 7.01.2 After receipt of a written determination from the division, the school district shall file its written appeal within ten (10) calendar days via first class mail, return receipt requested, in the Office of the Director of the Division of Public School Academic Facilities and Transportation, 501 Woodlane St., Suite 520-S, Little Rock, Arkansas 72201, no later than 4:30 pm on the tenth calendar day from receipt of the division's written determination. The division shall within thirty (30) calendar days receipt of the appeal schedule the appeal for the Commission's consideration and determination.
- 7.01.3 The school district shall provide in clear express terms a detailed explanation of why, beyond any reasonable doubt, the division's decision was clearly erroneous or outside the legal authority vested in the division.

- 7.01.4 The school district shall have the burden to establish a *prima facie* case, unless the Commission shall decide to hear the appeal *sua sponte*.
- 7.01.5 The school district shall not be entitled to a hearing before the Commission unless the Commission should indicate in writing that it desires to hear the appeal and provides notice of the time and location of the hearing.
- 7.01.6 Any appeal hearing shall be conducted pursuant to the hearing policy established by the Commission.
- 7.01.7 Provided the Commission determines the school district has established a *prima facie* case or the Commission *sua sponte* decides to hear an appeal, the Commission shall render a decision to approve or deny the appeal within sixty (60) calendar days of receipt of the appeal by the Commission from the division.
- 7.02 All decisions of the Commission regarding a school district's appeal of a division determination shall be final and shall not be subject to any right of further appeal or request for rehearing to the Commission or subject to right to petition for judicial review under the Arkansas Administrative Procedures Act, §25-15-201 *et seq.*

QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Ark. Commission of Public School Academic Facilities & Transportation
DIVISION Ark. Division of Public School Academic Facilities & Transportation
DIVISION DIRECTOR Dave Floyd, Interim Director
CONTACT PERSON Dave Floyd
ADDRESS 501 Woodlane, Suite 520-S, Little Rock, AR 72201
PHONE NO. 501-682-4261 FAX NO. 501-683-1200 E-MAIL dfloyd@arkedu.k12.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire & financial impact statement attached to the front of two (2) copies of your proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

1. What is the short title of this rule? ***Rules Governing the Transitional Academic Facilities Program.***
2. What is the subject of the proposed rule? ***Transitional Academic Facilities Program***
3. Is this rule required to comply with federal statute or regulations? Yes _____ No ***X*** _____
If yes, please provide the federal regulation and/or statute citation.
4. Was this rule filed under the emergency provisions of the Administrative Procedures Act?
Yes _____ No ***X*** _____
If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes ***X*** _____ No _____

5. Is this a new rule? Yes ☒ No ☐ If yes, please provide a brief summary explaining the regulation. ***The regulation establishes the procedures for school districts to follow in applying for Transitional Facilities Program.***

Does this repeal an existing rule? Yes ☐ No ☒ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ☐ No ☒ If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. **NOTE: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law grants the authority for this proposed rule. If codified, please give Arkansas Code citation. ***A.C.A 6-20-2506, 6-21-804(b), 25-15-20A and Acts 1327, 1426 and 2206 of the 85th Arkansas General Assembly.***
7. What is the purpose of this proposed rule? Why is it necessary? ***To establish a program and process of providing state financial participation on a qualified basis for constructing school facilities from Jan. 1, 2005 to June 30, 2006.***
8. Will a public hearing be held on this proposed rule? Yes ☒ No ☐
If yes, please complete the following:
- Date ***August 16, 2005***
Time: ***11:00 a.m.***
Place: ***ADE Auditorium***
9. When does the public comment period expire for permanent promulgation? (Must provide a date.) ***August 12, 2005***
10. What is the proposed effective date of this proposed rule? (Must provide a date.)
September 2005
11. Do you expect this rule to be controversial? Yes ☒ No ☐
If yes, please explain. ***The program establishes procedures to be followed with a ceiling on the cost of construction that will be eligible for funding.***
12. Please give the names of persons, groups, or organizations that you expect to comment on these rules. Please provide their position (for or against) if known.
School administrators.

FINANCIAL IMPACT STATEMENT

DEPARTMENT Ark. Division of Public School Academic Facilities & Transportation
DIVISION Ark. Division of Public School Academic Facilities and Transportation
PERSON COMPLETING THIS STATEMENT Dave Floyd
TELEPHONE NO. 501-682-4261 FAX NO. 501-683-1200 EMAIL dfloyd@arkedu.k12.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE ***Rules Governing the Transitional Academic Facilities Program***

1. Does this proposed, amended, or repealed rule or regulation have a financial impact? Yes X No
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
NA – appropriation was made for program.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

General Revenue
Federal Funds
Cash Funds
Special Revenue
Other (Identify)

Total NA

Next Fiscal Year

General Revenue \$50 million
Federal Funds
Cash Funds
Special Revenue
Other (Identify)

Total ***\$50 million***
(See Question 2.)

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation and explain how they are affected. ***Local school districts. Each funded program requires local participation.***

Current Fiscal Year

\$ NA

Next Fiscal Year

\$ ***50 million***

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

\$ NA

Next Fiscal Year

\$ ***50 million***

DEPARTMENT OF EDUCATION
FISCAL IMPACT STATEMENT OF PROPOSED REGULATION
(In compliance with Acts 884 and 1253 of 1995)

Regulation Title: ***Rules Governing the Transitional Academic Facilities Program***

Summary Description of Regulatory Proposal: ***Establishes procedures and process for school districts to follow when applying for state financial participation on construction projects from January 1, 2005 to June 30, 2006.***

Cite Statutory Authority for this Regulatory Proposal:

- I. Fiscal Impact on the Department: (include whether impacts are non-recurring or recurring)
 - A. Resources Required - Personnel, equipment, office space.
New division, appropriation has been made.
 - B. Time Required for Implementation.
By June 30, 2006.
 - C. Procedural Changes.
None.
 - D. Other.
- II. Fiscal Impact on Local School District or Others? (Include whether impacts are non-recurring or recurring)
 - A. Resources Required - Personnel, equipment, office space.
None.
 - B. Time Required for Implementation.
Difficult to estimate. Best estimate is three to four months considering all that has to be done: fiscal agents, architects, bond issue vote.
 - C. Procedural Changes.
 - D. Other.
- III. Additional Comments.

Prepared by: (Name)	Dave Floyd
(Title)	Interim Director
(Date)	6/21/05